

Sample Scripts for Bench Officers

- Bench officers provide the most vital link to ADR by suggesting to parties and counsel that they consider ADR options. There are several ways to do this, including:
 - Individually, bench officers may refer on a case-by-case basis, as the need for ADR becomes apparent. This works well on the status conference calendars, for example. (See Tab 3 “Courtroom Procedures.”)
 - Some bench officers give a standard admonition at the beginning of every calendar along with their opening remarks. This works well during law and motion calendars. A sample edited from a prior supervising family law judge is set forth on the next page:

OPENING REMARKS FOR AN OSC CALENDAR

"Good morning, everyone. Welcome to our Family law law and motion calendar...

I have carefully read all the papers timely filed with the Court. Please do not repeat to me what you have already told me in written form.

For those who are represented by attorneys, I want to remind counsel of our Local Court Rule requirement that you meet and confer prior to the court hearing your case. If you have not yet had this opportunity, please set out into the hallway and do so now. We will pass your case until this requirement has been satisfied.

If you are here on cases involving contested issues of custody and/or visitation, please be aware that those issues must be mediated prior to the Court hearing them. We have M____. _____ (FCS' representative) of Family Court Services present with us to assist with day-of-court mediations. We have limited availability for day-of-court mediations. If you have not already been through Family Court Services and do not receive a day-of-court mediation, your case will be continued for a brief time period so that you can go through mediation and the Court can receive a written report from Family Court Services.

Finally, I want to make sure that everyone is aware of a program that we have here in San Mateo County known as the Family Law ADR Program. [Hold up brochure.] This is a program run by a partnership among the Court, the Bar Association, and the Community. ADR stands for alternative dispute resolution, or as others call it, appropriate dispute resolution. This program offers you the trained services of a mediator or arbitrator at a very reasonable cost to assist you in resolving in an informal setting outside of court as many of the issues involved in your case as you desire to submit to ADR.

I bring this program to your attention this morning for two reasons: First, I personally am a very strong believer that, as a general rule, parties to family law proceedings are in a better position than is the Court to craft the best resolution of the issues in their case. Parties who settle their cases are usually more satisfied with the results. Second, you are here today on very limited issues. I have the legal ability to determine only those issues properly presented by the papers filed with the Court. I find that as people start talking about some of the issues in their case, they frequently desire to discuss the bigger picture. I cannot hear all of those issues this morning, but this program does offer you the opportunity to settle your entire case. I highly recommend ADR to you and invite you to pick up one of these brochures. If, after reading the brochure you'd like to be referred to ADR, please let me or my staff know."

TOP REASONS TO RECOMMEND ADR

The following excerpts may be helpful in formulating your own comments when suggesting ADR.

Below are the typical reasons why mediation or another form of dispute resolution may be more case appropriate than litigation as excerpted from CJER's "Judge's Guide to ADR":

- Parties in ADR can keep their dispute private.
- Parties who use ADR may resolve their case more quickly than parties who litigate.
- ADR can be scheduled at the convenience of the parties and counsel.
- Parties are able to tell their side of the story fully, and feel they have an outlet for their frustration, anger, or pain.
- Parties have more control over the resolution process.
- If litigated, fees and costs may be high relative to the amount in controversy.
- Remedies and results can be tailored to parties' needs and interests without the limited parameters imposed by litigation.

ADVANTAGES TO CHOOSING MEDIATION EARLY

A 2005 State Judiciary Institute study compared two demographically comparable counties in Virginia, one where parties were screened and referred to family mediation *prior to or at the time of their first hearing*, and the other where parties weren't offered mediation until *after the first hearing*. The study found that early referrals to mediation result in great benefit to both the parties and the court. Notably:

- There were significantly fewer numbers of hearings when parties went to mediation early in the case.
- The overall time that a case remained in the court (measured from the initial petition through judgment) was less for parties that used mediation.
- Fewer cases needed to be adjudicated when the parties opted for mediation.

OVERCOMING RESISTANCE TO ADR

Sometimes a bench referral to ADR is met with some resistance. Once parties and counsel have the judge's ear, there is reluctance to let go. The following are some suggestions on how to deal with this from one of our former civil case management judges:

- "Disregard for the most part comments such as, 'This case won't settle and we want it set for trial.' My experience is that this is almost always posturing and statistics show that cases do settle."
- "Mediation is probably the best form of ADR available for most cases."
- "Don't buy the excuse that the dispute is not suitable for mediation without very close scrutiny."
- "Don't forget that ADR works and saves judges many hours of subsequent labor. Actively encourage it."
- "The program is voluntary but you can mandate that parties meet with ADR staff to consider ADR options. Generally, judges get a commitment in court to try some form of ADR and leave it to staff to work out the details and to answer questions."